

From: Weston E. Whatcott [wes@adoptionnet.org]
Sent: Sunday, November 02, 2003 9:16 PM
To: adoptionregs@state.gov
Cc: Weston E. Whatcott; Tcexecdir@aol.com; Chi4adopt@aol.com; Kathy Kaiser
Subject: Proposed Hague Convention Regulations: Docket Number State/AR-01/96
Date: November 2, 2003
To: Jessica Rosenbaum, Department of State
From: Weston E. Whatcott, Executive Director, West Sands Adoptions
Regarding: Proposed Hague Convention Regulations: Docket Number State/AR-01/96

Dear Ms. Rosenbaum:

I am the Executive Director of West Sands Adoptions, a child placement agency located in Provo, Utah. Though we are small, over the last 13 years we have served the citizens of the State of Utah and citizens throughout the United States by assisting hundreds of families to adopt precious helpless children from throughout the world. My wife and I have personally adopted six orphan children from foreign countries. Our daughter adopted a special granddaughter from China last month. I have a niece adopted from Korea. If you visit our website, www.adoptionnet.org you will see we are in the process of constructing an entire new orphanage in Haiti, one of the poorest nations in the Western Hemisphere. Not only is this orphanage intended to be a way station to nurse the orphans back into good health and prepare them for entry into their new homes, we will be providing a useful service to the nearby community by providing education, vocational training, farming projects, medical services not only to the orphans but for the local villagers, provision of clean drinking water from our well not just to the orphans but to the local villagers, employment for the local villagers, and much more.

Although what we are doing will not revolutionize the world, it will go a long way to build good will towards the United States. One of the favorite activities enjoyed by the hundreds of volunteer workers who have gone at their own expense to help us construct this orphanage is to play with and interact with the local village children. The local villagers have received and will continue to receive employment, something they have long been without. We claim no honor or glory for this. We are just doing what we can to be one of the "thousand points of light," light not just in the United States, but in many foreign countries as well.

We would like to continue to do this for many years not just in Haiti, but in several other countries. We have plans on the drawing boards for similar projects in at least three more countries.

But there are ominous storm clouds on the horizon. If these storms hit us with the full fury with which it appears they might, it will mean the death not only of our agency, but of all except the largest, most powerful, and most expensive adoption agencies in America.

PLEASE DO NOT LET THAT HAPPEN!

Please do not ignore the needs of a significant portion of the American Citizenry to have available to them affordable and professional international adoption services.

Here are some of my concerns, items over which you have a significant control and influence:

4- Under the recently approved Hague Convention Treaty, all agencies doing international adoptions will need to become what is referred to as "Hague Accredited."

We have no argument with the principle of making sure all agencies follow professional standards. Our agency

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prides itself on going beyond normal professional standards of practice. But some of the proposed accreditation methods are so excessively burdensome, there is no way we can meet them. One of these is to have a private accreditation agency, most commonly considered to be the COA, do the accreditation.

There is no way our agency can pay the COA \$100,000 (which is the going rate in Utah for a small agency such as ours) to be "Hague Accredited" by the COA. It would be far better for the DOS to insist, or at least make it a clear option, that the Hague Accreditation be done by the present state licensing agencies. Federal funds are given to the Department of Human Services (or similar title) of virtually every state in the nation. The idea that such funds could be withdrawn should states fail to make Hague Accreditation available through their normal licensing procedure would be a big incentive for the states to participate in the accreditation process. Even if the adoption agencies within a state that do international adoptions had to pay a significantly higher fee to include Hague Accreditation along with their regular licensing procedures and fees, this would be far better than to go through an entity like the COA. It is inherently unfair that COA should be given an exclusive mandate to do the accreditation.

2- Insurance and liability. The proposed regulations of the DOS will require agencies to have insurance for \$1,000,000 for each occurrence. This extends not just to the agency, but into the personal pockets of the agency director, the board of directors, everyone. This flies in the face of Utah law which wisely limits the liability of 501 (c) (3) non-profit agencies such as ours to the assets of the agency. Otherwise we would never be able to muster up a responsible Board of Directors to oversee our operations.

We believe agencies should be accountable for their actions. Those of us who take our activities seriously do not fear scrutiny. I guess there will always be a few "bad apples" in the orchard. But to have this sort of requirement is utterly absurd. At present most of the international adoptions done by West Sands Adoptions cost the families a total (by total I mean *real* total--- travel, legal fees, orphanage fees, legal fees, agency fees, BCIS fees, etc., **everything**) of \$15,500 to \$17,800. I believe the "industry standard" is between \$17,000 to \$25,000. I know of no insurance company that will issue such insurance at any premium cost. If there ever should be an insurance company willing to write such an insurance policy, the premiums will be so high, the cost of international adoptions will jump at least an additional \$25,000+ for each and every adoption, thus making international adoption not an option for any but the very wealthy. This is particularly ridiculous when the regulations are examined more closely.

There is no way any agency can be responsible for every action taken by every foreign doctor who examines every foreign orphan being considered for adoption, for every action taken by the staff of every foreign orphanage, for the lab report done by every foreign clinic, for every document prepared by an attorney or orphanage staff in every foreign country. Yet the way things read, if a foreign doctor should fail to make a correct diagnosis (and how many American doctors, even with the most sophisticated equipment can always diagnose a congenital heart defect or something similar), it will be the American agency that will need to have insurance for \$1,000,000 to cover the "mistake" of the foreign doctor or other person. If a foreign government should suddenly and without notice have a civil war and adoptions get shut down, if a cholera epidemic breaks out and infects every child in the orphanage in which we are working, under the proposed regulations we will be liable up to \$1,000,000 for each child that does not get "delivered" as intended. We will no longer be able to have the adoptive families sign a waiver of responsibility for such things that are totally beyond our control. Nope. The agency has to take it on the chin. No matter how diligent we are, no matter how professional we are, we must assume total liability for anything that might go wrong, for every "defect" that might appear in every child that comes from poor nutrition, abuse, neglect, poor care, etc. as is common in the countries from which these helpless children come. In a litigious society such as ours, even by having the client sign a waiver of responsibility, we are still at legal risk (a copy of our waiver is on our website. I'll include a copy of this when I send you two hard copies of this letter). Why would anyone want to open up a Pandora's box of lawsuits for things over which we have no control? Doing international adoptions is complicated enough without putting sugar in our gas tanks.

I know of no agency director willing to assume a personal risk of \$1,000,000 for things over which he/she has NO control. I know of no insurance agency foolhardy enough to sell such an insurance policy.

Unless DOS finds a way to alter this, we are out of business. West Sands Adoptions will do no more adoptions. Our orphanage and similar projects in other countries will close. There is no way we can contend with such heavy handed liability requirements.

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3- Time for consideration. I understand the deadline for our concerns to be voiced is November 14. Some of the larger and extremely wealthy agencies may wish this deadline to remain in place. Thus they can be assured they will be the only agencies left standing. But most of us have just barely come to realize even to a small extent what is going on. The deadline for public comment and input needs to be extended. That is the only way to have fair play.

So I ask, is it the task of the DOS to serve the general citizenry of the United States and continue to allow non-profit voluntary agencies such as ours help to the degree that we can to better the general living conditions of thousands of underfed and neglected people in the world, or to make the privilege of adoption an option for only the very wealthy?

I appreciate your time and concern to address these matters.

Wes Whatcott, LCSW
Executive Director
West Sands Adoptions
<http://www.westsandsadoption.org>

and

<http://www.adoptionnet.org>

cc: Senator Orrin Hatch, Senator Robert Bennett, Congressman James V. Hansen

11/3/2003

From: Weston E. Whatcott [wes@adoptionnet.org]

Sent: Friday, November 07, 2003 12:00 PM

To: adoptionregs@state.gov

Subject: Fw: [JCICS Members List]: Hague Treaty Meeting

Dear Ms. Rosenbaum,

Please take the letter below into consideration. Over 6,000 adoptive children per year come from China, 4,000 from Russia, and a ton more from other countries. This is not just a matter of a few dozen people to whom the DOS can say, "Oh Well," and let it be. We are talking tens of thousands of children each year, well over 100,000 children over a decade. How could anyone in the DOS ever be so removed from reality as to propose such absurd insurance demands? How could anyone expect us to do away with our "Waivers" which are essential to have the families sign if we are to have any ability to conduct international adoptions?

Will the DOS provide affordable insurance for us at government expense? Offer that to us and we'll calm down. At least on that point.

This has the potential of being the biggest disaster, the biggest blunder the DOS has ever made. Please do not let it happen.

Wes Whatcott
West Sands Adoptions

----- Original Message -----

From: Weston E. Whatcott

To: AmFAA@aol.com

Sent: Friday, November 07, 2003 9:33 AM

Subject: Re: [JCICS Members List]: Hague Treaty Meeting

Cheryl,

I suggest you e-mail my response which will include your entire letter to the DOS. Something has to happen to shake these birds up.

Wes Whatcott

----- Original Message -----

From: AmFAA@aol.com

To: members-L@jointcouncil.org ; Directors-L@jointcouncil.org

Cc: Ballif@state.gov ; susan_brouillette@lugar.senate.gov ; Ningle@FSSA.state.IN.US ;

MFriedle@fssa.state.in.us ; tim.roemer@mail.house.gov ; souder@mail.house.gov ;

John.Hostettler@mail.house.gov ; rep.carson@mail.house.gov ; administrator@coats.senate.gov ;

senator_lugar@lugar.senate.gov

Sent: Thursday, November 06, 2003 11:16 AM

Subject: [JCICS Members List]: Hague Treaty Meeting

11/6/03

To all Joint Council (JCICS) Members:

Our Indiana State, international adoption people were VERY surprised to learn about the State Department (DOS) meeting last week (10/29). They received NO information about the meeting and have said they would have definitely attended. I was told they have received VERY little information about the Hague Treaty from the State Department and even if the information is being sent to another person in their office the info would be

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passed to these women. They seem frustrated with the lack of contact from the DOS, confusing legalese wording they have seen about the Hague Treaty and they have concerns about how this will impact small agencies who they support. I have shared Hague Treaty info I have with them (but I should not have to, they should receive everything the DOS is doing about the Hague Treaty), and our agency is asking that Indiana consider handling our state accreditation.

I attended the DOS meeting on 10/29 but only because with a few days notice I received the info from JCICS, not from the DOS. Thankfully I have an adult son who works for United Airlines and I can jump on a plane in the US, at the last minute, at no charge.

As JCICS has embarked on a campaign to increase membership I URGE the board and all members to consider inviting our state international adoption agency representatives to become members of JCICS, just as the Adoptive Parents Committee in New York have, OR to at least invite our state people to our annual April meeting - I feel certain they would appreciate all the information. Our state people are our daily contacts for adoption work in our state and many of us (at least many small agency people) believe our states should handle accreditation for their agencies.

At last weeks meeting I asked the DOS lawyers who the "ORIGINAL" authors of the Hague Treaty are - I want to know who initiated the Treaty. Acton Burnell did not start all of this with regard to a Hague Treaty, they are a consulting firm who was asked to write the regs as they presently are - the Hague Treaty was started way before they got involved. Either the DOS lawyers did not know or did not want to say but they did not provide the information. I am one of, I believe many, who after the meeting break felt we were being shut down by the State Department lawyers when we asked for information.

The countries our agency is presently working in have not indicated they intend to sign the Hague Treaty but that could change, plus as a member of JCICS I feel as "one" with other small member agencies. Our agency believes the Hague Treaty is a disaster waiting to happen for families and agencies but most of all for the children who so badly need our help. I STRONGLY question if ANYONE involved in initiating the Hague Treaty and the Acton Burnell folks, have any substantial hands-on, in-country, small and large adoption agency experience.

A couple of years ago I asked several Canadian provincial authorities why they ratified the Hague Treaty and I was told it was so they could license agencies which many provinces had not done. They questioned why the US would ever sign and ratify the Treaty since we do license agencies and they volunteered that if any of our states do not license agencies then they should be made to. The Canadian families we have worked with have seen their adoption costs and paperwork increase substantially because of the Hague Treaty.

The last time I looked I do not think the US is at war with Canada, although the way things are going that could change too. Has anyone from the DOS sat down and discussed the Hague Treaty with Canadian provincial adoption authorities, the people who are the front line folks for international adoption, to see how they feel after dealing with the Treaty for a couple of years and how it has affected their adopting families?

Has anyone from DOS done the same with other foreign countries - they could start with Guatemala. After being urged by their country's lawyers to take another look, the Government of Guatemala felt the Hague Treaty was in violation of their constitution. An adoption lawyer at the DOS meeting said there are parts of the regs which may violate OUR constitution. WHY are we allowing this to be shoved down our throats?

Since AFAA was first licensed in 1986 we have not had insurance and we have never been sued - we realize that could eventually happen, however, as I have heard, large agencies with insurance have often been sued. Perhaps it is because IF someone wanted to sue AFAA they do not see any deep pockets and they are not interested in used office furniture.

After the official DOS meeting ended I discussed our lack of insurance with several DOS staff. I explained that if I inquired of any insurance agency about insuring AFAA for our work in Africa, particularly in Liberia, that after the insurance rep stopped laughing they would hang up on me. It was then that someone else said they know of agencies struggling to get insurance coverage and they work in China. Some agencies are getting insurance quotes, if they get any, of \$200,000 to \$250,000 a year. Has anyone at the State Department done their OWN investigation about insurance coverage - surely they could put an intern on digging out insurance information, coverage and costs. I believe that is why we pay taxes - for services from our government.

To say that an adoption agency needs to be insured for, and responsible for, work done in the foreign country,

foreign staff with cultural and language differences, and medical reports done in the foreign country, is insane. If, as the lawyers at DOS said, there are people who are waiting to push the regs through right now and not have an extension, we need to know WHO these people are. The lawyers from DOS conducting the meeting refused to answer when they were asked.

I urge all members and our member's families to push for an extension and review of the regs as they are currently written before many small adoption agencies no longer exist. We MUST input into this before we are run out of business by our own government.

Cheryl Carter-Shotts
Americans For African Adoptions, Inc.

Copy to: Senator Richard Lugar
Senator Evan Bayh
Congressman Dan Burton
Congressman Peter Visclosky
Congresswoman Julia Carson
Congressman David McIntosh
Congressman Tim Romemer
Congressman Mark Souder
Congressman Stephen Buyer
Congressman Edward Pease
Congressman John Hostettler
Congressman Baron Hill

In a message dated 11/6/2003 9:24:57 AM US Eastern Standard Time, heartsent@earthlink.net writes:

Subj: **[JCICS Members List]: extension for Hague comments**
Date: 11/6/2003 9:24:57 AM US Eastern Standard Time
From: heartsent@earthlink.net
To: members-L@jointcouncil.org
CC: jcics@jointcouncil.org
Sent from the Internet

We also join in asking the State Department for an extension. There is the issue of whether of some of what they are doing is constitutional or not. I think it would be easier for everyone to have the discussion about that now, before the regulations are finalized. I believe that the State Department wants a solid and successful outcome of its work in forming these regulations. Some extra time now for an examination of these issues would seem to be the best first step.

Dick Lotspeich

11/10/2003